

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1524 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMANSINH PRATAPSINH DABHI

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 10/10/96

ORAL JUDGEMENT

Rule: Heard the learned advocate for the parties at length on merit. Hence I proceed to dispose of the same finally on merits.

Laxmansinh Pratapsinh Dabhi resident of village Pethapur taluka district Gandhinagar has preferred the present petition u/s 482 Cr.P.C. to quash the registration of FIR bearing CR No.I 47/96 registered by Pethapur Police Station against him and others for the offence u/s 147, 148,149,323,354,504,506 I.P.C. and section 135 of the Bombay Police Act. It is the claim of the petitioner that he being the village Sarpanch he has been falsely involved in the said crime registered at CR. No.1.47/96 in order to see that he is suspended from

holding the post of Sarpanch of village Pethapur. The petitioner further submits that after the registration of the said offence the petitioner was suspended as Sarpanch of village Pethapur. According to him prior to the date of the incident alleged to have taken place on 2.4.96, the village Panchayat under his leadership had enhanced the octroi on various commodities which were being imported in the Gram Panchayat. Same was not liked by the opposite party as well as by the trading community of the village and there was an agitation regarding the same and on the date of the incident there was also a demonstration and rally against the said octroi hike.

2. It is further submitted on behalf of the petitioner that if the F.I.R. is read minutely then it would be quite clear that in the FIR there is no disclosure or mention of any offence by the present petitioner. When the first informant who is the only aggrieved and injured person does not state in the FIR any act or activity committed by him so as to take cognizance against him, then registration of the FIR against him deserves to be quashed.

3. The alleged incident happened on 2.4.96 at 19.10 hours. English translation of the relevant portion of the FIR reads as under:

"...I also got down from matador and proceeded towards my house, at that time near Pethapur, S.T. Bus Stand, Sarpanch of our village Laxmansinh Dabhi, his wife, his sister-in-law, his brother-in-law and his son Pruthvisinh Laxmansinh came. Laxmansinh Dabhi stopped me and asked as to why " are you abusing me" and therefore, I replied that " I was not the only person who has given abuses, the entire village abuses you". On saying so, Laxmansinh Dabhi called his wife Saralaben and his sister-in-law and other persons aforesaid; and his sister-in-law and other persons aforesaid; and wife of Laxmansinh snatched my Sari and started scuffling with me, at this time sister in law attacked with string which was in her hand, on my head and wife of Laxmansinh pulled me down by dragging my hairs and I was beaten. At this juncture, persons amongst rally, Rajendrasinh Amarsinh Waghela and Pradipbhai Hasmukhbhai Modi and Khodabhai Patel etc. intercepted and got me released....."

Now if the above portion of the FIR is taken into

consideration, then it would be quite clear that the informant states that at the time of the incident when she was going to her house, she was questioned by the present petitioner before me as to why she was abusing him and on that questioning by him she had replied that not only she was abusing but the whole village was abusing him. On that reply of her, the petitioner called his wife there and thereafter his wife also questioned her and then there was exchange of words between his wife and first informant and and his wife who was having a piece of rope in her hands started assaulting her and petitioner's wife had also snatched away her sari after pulling her down on the ground. Now in the whole version which is given by the first informant ,no circumstance is stated by her which could be taken into consideration for holding that the police were justified in registering the offence against the present petitioner. No doubt, the first informant does mention that present petitioner has left the wife's sister, wife's brother and son were present along with the present petitioner and the petitioner had questioned as to why she was abusing him. It is her own saying that, she replied that, as she was not the only person abusing him but the whole village was abusing . In the circumstances, his questioning her as to why she was abusing could not be said to be any criminal act committed by him so as to book him for any offence against him. No doubt he had called him wife at that time there but it is very pertinent to note that it is not her allegation that he had asked his wife to question the first informant or abuse the first informant and to assault the first informant. Her own saying shows that as soon as his wife came there, she also questioned the first informant as to why she was abusing and then there was exchange of words between the two and thereafter the wife of the present petitioner had, as per the claim of the first informant, used criminal force against her and had assaulted her and had also snatched away her sari . But it is very pertinent to note that in her FIR, the first informant does not say that the petitioner before him had in any way instigated his wife either by words or by actions to commit the alleged offence by her against the first informant. Therefore, in the circumstances from the FIR itself there is no disclosure of any offence having committed by the present petitioner so as to take cognizance of the same. It must be remembered that the first informant could not be said to be an illiterate, simple village woman and the material on record shows that he had participated in the agitation for hike in octroi and had also participated in the rally and had also gone before the DDO to give representation against the said hike of octroi duty and

her own statement in the FIR that on the questioning of the petitioner-accused as to why he had abused her, she had retaliated by saying not only she was abusing but the whole village was abusing him. Therefore, in the circumstances it could be said that the FIR given by her was not disclosing the whole truth.

4. Therefore, in view of the above discussion and the material on record, I am of the view that the registration of the offence against the petitioner was not at all justified and there is truth in the claim made by the petitioner that he has been falsely involved in the incident in order to suspend him from holding the post of village Serpanch in view of the fact that immediately after registering the offence against him he had been suspended. Thus in my opinion the criminal proceedings against the present petitioner is a clear abuse of the process of law. In the circumstances I hold that this is a fit case for exercising the jurisdiction under section 482 Cr.P.c. I therefore, allow this petition and quash the registration of the FIR registered vide CR. No.I.47/96 with Pethapur Police Station, Gandhinagar District. Rule made absolute.

(S.D.Pandit.J)